

§ 212.5

Garnish Federal Benefits is not attached to or included with the garnishment order, then the financial institution shall follow the procedures in § 212.5 and § 212.6.

§ 212.5 Account review.

(a) *Timing of account review.* When served a garnishment order issued against a debtor, a financial institution shall perform an account review:

(1) No later than two business days following receipt of (A) the order, and (B) sufficient information from the creditor that initiated the order to determine whether the debtor is an account holder, if such information is not already included in the order; or

(2) In cases where the financial institution is served a batch of a large number of orders, by a later date that may be permitted by the creditor that initiated the orders, consistent with the terms of the orders. The financial institution shall maintain records on such batches and creditor permissions, consistent with § 212.11(b),

(b) *No benefit payment deposited during lookback period.* If the account review shows that a benefit agency did not deposit a benefit payment into the account during the lookback period, then the financial institution shall follow its otherwise customary procedures for handling the garnishment order and shall not follow the procedures in § 212.6.

(c) *Benefit payment deposited during lookback period.* If the account review shows that a benefit agency deposited a benefit payment into the account during the lookback period, then the financial institution shall follow the procedures in § 212.6.

(d) *Uniform application of account review.* The financial institution shall perform an account review without consideration for any other attributes of the account or the garnishment order, including but not limited to:

(1) The presence of other funds, from whatever source, that may be commingled in the account with funds from a benefit payment;

(2) The existence of a co-owner on the account;

(3) The existence of benefit payments to multiple beneficiaries, and/or under

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multiple programs, deposited in the account;

(4) The balance in the account, provided the balance is above zero dollars on the date of account review;

(5) Instructions to the contrary in the order; or

(6) The nature of the debt or obligation underlying the order.

(e) *Priority of account review.* The financial institution shall perform the account review prior to taking any other actions related to the garnishment order that may affect funds in the account.

(f) *Separate account reviews.* The financial institution shall perform the account review separately for each account in the name of an account holder against whom a garnishment order has been issued. In performing account reviews for multiple accounts in the name of one account holder, a financial institution shall not trace the movement of funds between accounts by attempting to associate funds from a benefit payment deposited into one account with amounts subsequently transferred to another account.

§ 212.6 Rules and procedures to protect benefits.

The following provisions apply if an account review shows that a benefit agency deposited a benefit payment into an account during the lookback period.

(a) *Protected amount.* The financial institution shall immediately calculate and establish the protected amount for an account. The financial institution shall ensure that the account holder has full and customary access to the protected amount, which the financial institution shall not freeze in response to the garnishment order. An account holder shall have no requirement to assert any right of garnishment exemption prior to accessing the protected amount in the account.

(b) *Separate protected amounts.* The financial institution shall calculate and establish the protected amount separately for each account in the name of an account holder, consistent with the requirements in § 212.5(f) to conduct distinct account reviews.

(c) *No challenge of protection.* A protected amount calculated and established by a financial institution pursuant to this section shall be conclusively considered to be exempt from garnishment under law.

(d) *Funds in excess of the protected amount.* For any funds in an account in excess of the protected amount, the financial institution shall follow its otherwise customary procedures for handling garnishment orders, including the freezing of funds, but consistent with paragraphs (f) and (g) of this section.

(e) *Notice.* The financial institution shall issue a notice to the account holder named in the garnishment order, in accordance with § 212.7.

(f) *One-time account review process.* The financial institution shall perform the account review only one time upon the first service of a given garnishment order. The financial institution shall not repeat the account review or take any other action related to the order if the same order is subsequently served again upon the financial institution. If the financial institution is subsequently served a new or different garnishment order against the same account holder, the financial institution shall perform a separate and new account review.

(g) *No continuing or periodic garnishment responsibilities.* The financial institution shall not continually garnish amounts deposited or credited to the account following the date of account review, and shall take no action to freeze any funds subsequently deposited or credited, unless the institution is served with a new or different garnishment order, consistent with the requirements of this part.

(h) *Impermissible garnishment fee.* The financial institution may not charge or collect a garnishment fee against a protected amount. The financial institution may charge or collect a garnishment fee up to five business days after the account review if funds other than a benefit payment are deposited to the account within this period, provided that the fee may not exceed the amount of the non-benefit deposited funds.

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§ 212.7 Notice to the account holder.

A financial institution shall issue the notice required by § 212.6(e) in accordance with the following provisions.

(a) *Notice requirement.* The financial institution shall send the notice in cases where:

(1) A benefit agency deposited a benefit payment into an account during the lookback period;

(2) The balance in the account on the date of account review was above zero dollars and the financial institution established a protected amount; and

(3) There are funds in the account in excess of the protected amount.

(b) *Notice content.* The financial institution shall notify the account holder named in the garnishment order of the following facts and events in readily understandable language.

(1) The financial institution's receipt of an order against the account holder.

(2) The date on which the order was served.

(3) A succinct explanation of garnishment.

(4) The financial institution's requirement under Federal regulation to ensure that account balances up to the protected amount specified in § 212.3 are protected and made available to the account holder if a benefit agency deposited a benefit payment into the account in the last two months.

(5) The account subject to the order and the protected amount established by the financial institution.

(6) The financial institution's requirement pursuant to State law to freeze other funds in the account to satisfy the order and the amount frozen, if applicable.

(7) The amount of any garnishment fee charged to the account, consistent with § 212.6.

(8) A list of the Federal benefit payments subject to this part, as identified in § 212.2(b).

(9) The account holder's right to assert against the creditor that initiated the order a further garnishment exemption for amounts above the protected amount, by completing exemption claim forms, contacting the court of jurisdiction, or contacting the creditor, as customarily applicable for a given jurisdiction.